IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Defective Special Appeal No. 7 of 2003

Date of decision: 2nd August, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date 2.8.2006. Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Defective Special Appeal No. 07 of 2003

1. Smt. Annpurna Devi widow of Late Jethu Prasad,
2. Kailash Prasad s/o Late Jethu Prasad
3. Vijay Mohan s/o Late Jethu Prasad
   All residents of Village – Manpur,
   Patti Bara Gaddi, Post Office Manpur,
   District Uttarkashi ……. Appellants

Versus

1. State of Uttar Pradesh through the Secretary,
   Department of Irrigation,
   Vidhan Sabha Marg, Lucknow.
2. Engineer-in-Chief, Irrigation Department,
   Sinchai Bahwan, Canal Colony,
   Cantt Road, Lucknow (Now Engineer-in-Chief
   Irrigation Department, Dehradun).
3. Superintending Engineer,
   Irrigation Construction Circle, Dehradun.
4. Executive Engineeri, Irrigation Division,
   Uttar Kashi, District Uttar Kashi …….
   Respondents

Sri Pramod Belwal, Advocate with Sri Deep Joshi, Advocate for the appellants.
Smt. Beena Pandey, Advocate for respondents 1.
Sri N.C. Gupta, Standing Counsel for respondents 2 to 4.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

\

RAJEEV GUPTA, C. J. (Oral)

Sri Pramod Belwal, Advocate with Sri Deep Joshi Advocate for the appellants.

Smt. Beena Pandey, Advocate for the respondent 1.

Sri N.C. Gupta, Standing Counsel for respondents 2 to 4.

2. On due consideration, Delay Condonation Application is allowed and the delay in filing the Special Appeal is hereby condoned.

3. The learned counsel for the parties are heard on admission.

4. The appellants have filed this Special Appeal against the impugned judgment dated 27.08.2003 passed in Writ Petition No. 131 of 2001 (S/S)

whereby the writ petition filed by original petitioner Jethu Prasad was dismissed.

5. Original petitioner Jethu Prasad filed the writ petition in the year 1991 for the following reliefs:

> "(a) to issued an appropriate Writ, Order or Direction in the nature of Certiorari, quashing the impugned Sanction Order, dated 18.2.1991, as contained in Annexure '3', and the finally passed impugned order of Retirement, dated 19.7.1991, as contained in the Annexure '10' attached to the writ petition;
>
> (b) to issued an appropriate writ, order or direction, in the nature of Mandamus, commanding the Respondents No. 2 to 4, to allow the petitioner to continue to discharge his duty at the post of Chaprasi, as before, and not to relieve him to take charge from him;
>
> (c) to issue an appropriate Writ, Order or Direction, in the nature of Mandamus, Commanding the Respondents No. 2 to 4, to treat the petitioner to be in continuous service at the post of Chaprasi, on the basis that his date of birth is 18.8.1946, and to correct the entries in the petitioners's Service Book and the other records in the Department accordingly.
>
> (d) to issue an appropriate Writ, Order or Direction in the nature of Mandamus, Commanding the Respondents No. 2 to 4 to pay the petitioner his due salary at the prescribed rate even after 30.06.1991 and if the impugned order of retirement dated 19.7.1991 and the impugned Sanction Order dated 18.2.1991, had never been passed at all;
>
> (e) to issue an appropriate Writ, Order or Direction of such nature and in such terms to the Respondents No. 1 to 4 or any of them, to give to the petitioner such other relief as may be found necessary in the facts and circumstances of the case as well as may be found expedient in the interest of justice, which the Hon'ble Court may deem fit in the instant case;
>
> (f) to award costs of this Writ Petition to the petitioner, against the Respondents 1 to 4 or any of them."

6. Original petitioner Jethu Prasad joined services as "Mate" in the Irrigation Department in the year 1979. In his service records, his date of birth was recorded as 19.06.1931. On his attaining the age of 60 years on 30.06.1991, he was retired from service vide Order dated 19.07.1991.

7. The petitioner's entire claim was based on the plea that his correct date of birth was 18.08.1946 and the date of birth recorded in the Service-Book was incorrect. The petitioner, therefore, sought correction of his date of birth in the service records and the other consequential reliefs.

8. The learned Single Judge did not find any substance in the submissions advanced on behalf of the petitioner in view of Rule 2 of U. P. Recruitment to Service (Determination of Date of Birth) Rules, 1974, which expressly provided that the date of birth recorded in the Service-Book shall be final and no application or representation shall be entertained for correction of such date or age in any circumstances whatsoever.

9. Sri Pramod Belwal, the learned counsel for the appellants vehemently argued that the authorities and the learned Single Judge have erred in not giving due weight to the material which was submitted by the petitioner to establish that his correct date of birth was 18.08.1946.

10. The petitioner joined service in the year 1979. It is difficult to believe that it did not come to his knowledge for a period of more than 10 years that his date of birth recorded in the Service Book is 19.06.1931. The petitioner sought correction of his date of birth in the service record for the first time in the year 1991, which was his year of retirement. Thus, an attempt to get the date of birth corrected was made by the petitioner at the fag end of his service career.

11. On due consideration of the submissions of the learned counsel for the parties; the reasonings given by the learned Single Judge in the impugned judgment; above mentioned board features of the case; and the fact that the date of birth was sought to be corrected at the fag end of the petitioner's service career, we do not find any infirmity in the impugned judgment which may warrant interference in this Special Appeal.

12. The Special Appeal, therefore, is liable to be dismissed and is dismissed summarily.

(J.C.S. Rawat, J.) **(Rajeev Gupta, C. J.)**
02.08.2006 02.08.2006

A